# **EXHIBIT A**



**Corporate Creations Network Inc.** 

801 US Highway 1 North Palm Beach, FL 33408

Harbor Freight Tools USA, Inc. Tammy Stafford Associate General Counsel Harbor Freight Tools USA Inc 26677 Agoura Road Calabasas CA 91302 02/02/2023

Item: 2023-88

# SERVICE OF PROCESS NOTICE

The following is a courtesy summary of the enclosed document(s). ALL information should be verified by you.

Note: Any questions regarding the substance of the matter described below, including the status or how to respond, should be directed to the contact set forth in line 12 below or to the court or government agency where the matter is being heard. IMPORTANT: All changes or updates to the SOP contact individuals or their contact information must be submitted in writing to SOPcontact@corpcreations.com. Any changes will become effective upon written confirmation of Corporate Creations.

1.	Entity Served:	Harbor Freight Tools USA, Inc.
2.	Title of Action:	Michael W. Wagner vs. Harbor Freight Tools USA, Inc.
3.	Document(s) Served:	Summons Complaint
4.	Court/Agency:	St. Clair County Circuit Court
5.	State Served:	Illinois
6.	Case Number:	22LA1110
7.	Case Type:	Negligence/Strict Liability
8.	Method of Service:	Hand Delivered
9.	Date Received:	Friday 01/27/2023
10.	Date to Client:	Thursday 02/02/2023
11.	# Days When Answer Due: Answer Due Date:	30 Sunday 02/26/2023  CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	Sop Sender: (Name, City, State, and Phone Number)	Joshua D. Margolis St. Louis, MO 314-725-5050
13.	Shipped To Client By:	Email Only with PDF Link
14.	Tracking Number:	
15.	Handled By:	141
16.	Notes:	Please note an unexpected delay in delivery of the document was experienced due to extreme weather conditions. We apologize for any inconvenience.

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At Corporate Creations, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by Corporate Creations Network Inc.

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STATE OF II		For Court Use Only
CIRCUIT	COURT	
St. Clair	COUNTY	
Instructions ▼		
Enter above the county	Michael W. Wagner	
name where the case was filed.	Plaintiff / Petitioner (First, middle, last name)	
Enter your name as Plaintiff/Petitioner.	v.	
Enter the names of all	Harbor Freight Tools 1194 Inc	22LA1110
people you are suing as Defendants/	Harbor Freight Tools USA, Inc.  Defendant / Respondent (First, middle, last name)	Case Number
Respondents.	,	
Enter the Case Number		
given by the Circuit Clerk.	[ ] Alias Summons (Check this box if this is not the 1st Summons issued for this Defendant.)	
CIOIR.		-11
	There may be court fees to start or respond to a case. If you are un for a fee waiver. You can find the fee waiver application at: illinoi	able to pay your court fees, you can apply scourts.gov/documents-and-
	forms/approved-forms/.	
	E-filing is now mandatory with limited exemptions. To e-file, you	must first create an account with an e-
IMPORTANT	filing service provider. Visit efile, illinoiscourts, gov/service-provider.	lers.htm to learn more and to select a
IMPORTANT INFORMATION:	service provider. If you need additional help or have trouble e-filing or talk with your local circuit clerk's office. If you cannot e-file, you	ng, visit illinoiscourts.gov/iag/getneip.asp
	allows you to file in-person or by mail. Ask your circuit clerk for	more information or visit
	illinoislegalaid.org.	
	Call or text Illinois Court Help at 833-411-1121 for information al	bout how to go to court including how to
	fill out and file forms. You can also get free legal information and	<del></del>
	Do not use this form in an eviction, small claims, detinue, divorce Summons, Small Claims Summons, or Summons Petition for Disso	, or replevin case. Use the Eviction
	at illinoiscourts.gov/documents-and-forms/approved-forms. If you	r case is a detinue or replevin, visit
Plaintiff/Petitioner:	illinoislegalaid.org for help.	
	If you are suing more than 1 Defendant/Respondent, fill out a Sun	amons form for each
	Defendant/Respondent.	
In 1a, enter the name	1. Defendant/Respondent's address and service in	nformation:
and address of a Defendant/	a. Defendant/Respondent's primary address/info	
Respondent. If you are	Name (First, Middle, Last): Harbor Freight Too	
serving a Registered Agent, include the	Registered Agent's name, if any: Corporate C	
Registered Agent's	Street Address, Unit #: 350 S. Northwest Hig	
name and address here.		
In 1b, enter a second	Telephone: Email:  b. If you have more than one address where De	
address for Defendant/	list that here:	ondant toopendork might be leand,
Respondent, if you have one.	Name (First, Middle, Last):	
HATE OILS.	Street Address, Unit #:	
	City, State, ZIP:	
In 1c, check how you	Telephone: Email:	
are sending your documents to	c. Method of service on Defendant/Respondent:	
Defendant/	Sheriff Sheriff outside Illin	nois:
Respondent.	[] Consist areason across	County & State ensed private detective
	Special process server Lice	miseu pinvate uetective



In 2, enter the amount	2. Inf	formation abo	out the lawsuit	:			
of money owed to you.			\$50,000.00				A
	All	nount claimed		<del></del>		•	
In 3, enter your	3. Cc	ontact informa	ation for the PI	aintiff/Petitione	r:		
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email address, if you	INE	ame (First, Milde	ne, Lasi). <u>1109</u>	eshore Dr			
have one.	St	reet Address,	Unit #: 33 Lak	estione Dr.			
			Belleville, IL (		<u> </u>		
	Tε	elephone: (61	8) 550-2010	Email:			·
GETTING COURT DO			the state of the same	il account that you	do not share with a	nvone else and	that you check
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Important	You have be	een sued. Read	all of the docume	ents attached to this	s <i>Summons.</i> ad balaw If you	do not the co	ourt may decide
information for the	To participa	ite in the case, y	ou must follow t	he instructions list	Ammagnanaa an	d Answer/Res	monse forms can
person getting this form	the case wit	thout hearing fro	om you and you c	ould lose the case nd-forms/approved	, Appearance an Liforms!	u Answerrics	ponse torins van
LOTTI	be found at:	: minoiscourts.g	ov/documents-an	IG-TOTTIS/ADDIOVEG	PTOTITIS/.	<u> </u>	
Check 4a or 4b, If	4, ins	structions for	person receivi	ng this <i>Summ</i> o	ns (Defendant):	•	
Defendant/Respondent				s, you must file A			esponse
only needs to file an	<b>✓</b> a.	To respond		O doug offer you	have been ser	ved (not cou	nting the day
Appearance and				0 days after you	Have been ser	vea (not coa	nang me ooy
Answer/Response	ı	of service) by	e-filing or at:				
within 30 days, check box 4a, Otherwise, if		Address:				·	
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court date, check box		J., 41275,					
4b.	Г1 b.	Attend court					
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Defendant may file or e-file their Appearance and Answer/ Response. In 4b, fill out:		Courthouse A	Address You may be abl	e to attend this c	ourt date by ph		
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(Date to be entered by an officer or process server on the copy of this Summons left with the Defendant or other person.)

Case 3:23-CV-00713-Simble Supremeditult and is lequilized to be accepted in all litinois Circuit Sources.

This form is at	blosed by the illi	For Court Use Only	
STATE OF ILLINOIS, CIRCUIT COURT COUNTY		PROOF OF SERVICE OF SUMMONS AND COMPLAINT/PETITION	, .
Instructions			
Enter above the county name where the case was filed.	Michael W. Wa	gner oner (First, middle, last name)	_
Enter your name as Plaintiff/Petitioner.			
Enter the names of all people you are suing as Defendants/ Respondents.		Tools USA, Inc.	
Enter the Case Number given by the Circuit Clerk.	[] Alias Sum	mons (Check this box if this is not the 1 <sup>st</sup>	22LA1110  Case Number
**Stop. I	Do not complete	the form. The sheriff or special process	server will fill in the form.**
Mv name is		and I s	
[] I served the		omplaint/Petition on the Defendant/Res	spondent as follows:
FIFST, MIDDIE, LAS			
Male On th Addre	Female   is date: ess, Unit#:	ndant/Respondent:  Non-Binary Approx. Age:  at this time:	[]a.m.
☐ On so	omeone else at the	e Defendant/Respondent's home who is at	least 13 years old and is a family
meml On th Addre City,	per or lives there: is date: ess, Unit#: State, ZIP:	at this time:	☐ a.m. ☐ p.m.
Male and b abov	Female by sending a copy e address on	Middle, Last  Non-Binary Approx. Age: to this defendant in a postage-paid, sealed	Race:
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City,	State, ZIP:		

/06/21\

your signature certifies that everything on the <i>Proof of Service of Summons</i> is true correct to the best of your knowledge. You understand that making a false statem this form could be perjury.  By:    FEES					
On this date:	-			an our at Distance	-t/Bospondent
Address: City, State, ZIP: Other information about service attempt:  2. On this date: Address: City, State, ZIP: Other information about service attempt:  3. On this date: Address: City, State, ZIP: Other information about service attempt:  3. On this date: Address: City, State, ZIP: Other information about service attempt:  b NoT complete section. The conformation about service attempt:  If you are a special process server, sheriff outside Illinois, or licensed private det your signature certifies that everything on the Proof of Service of Summons is the correct to the best of your knowledge. You understand that making a false statement this form could be perjury.  By:  FEES Service and Return: Signature by: Signature by: Sheriff outside Illinois: Total Signature by: County and State Special process server Licensed private detective	made the followi	ng attempts to ser	ve the Summons and Complai	nt/Petition on the Defendi	and Respondent.
Address: City, State, ZIP: Other information about service attempt:  2. On this date: Address: City, State, ZIP: Other information about service attempt:  3. On this date: Address: City, State, ZIP: Other information about service attempt:  3. On this date: Address: City, State, ZIP: Other information about service attempt:  b NoT complete section. The conformation about service attempt:  If you are a special process server, sheriff outside Illinois, or licensed private det your signature certifies that everything on the Proof of Service of Summons is the correct to the best of your knowledge. You understand that making a false statement this form could be perjury.  By:  FEES Service and Return: Signature by: Signature by: Sheriff outside Illinois: Total Signature by: County and State Special process server Licensed private detective	On this date	<b>)</b> :	at this time:	🗌 a.m. 🗌 p.n	n.
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CIRCUIT O	OURT SUMMONS		_		
St. Clair	COUNTY		, '		
Instructions ▼					
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Enter the names of all		LLTt- HCA Inc	22LA1110		
people you are suing as Defendants/ Respondents.	Defendant	ght Tools USA, Inc.  / Respondent (First, middle, last name)	Case Number		
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and address of a	a.	Defendant/Respondent's primary address/inform			
Defendant/ Respondent. If you are		Name (First, Middle, Last): Harbor Freight Tools	USA, Inc.		
serving a Registered	Registered Agent's name, if any: Corporate Creations Network IN				
Agent, include the Registered Agent's	Street Address, Unit #: 350 S. Northwest Highway #300				
name and address here.		City, State, ZIP: Park Ridge, IL 60068			
	Telephone: Email:				
In 1b, enter a second	b.	If you have more than one address where Defer	ndant/Respondent might be found,		
address for Defendant/		list that here:			
Respondent, if you		Name (First, Middle, Last):			
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' Case 3:23-	3-cv-00713-SMY Document 1-1 Filed 02/24/23 Page 10 of 30 Page	e ID #16
In 2, enter the amount of money owed to you.	2. Information about the lawsuit:	
In 3, enter your complete address,	3. Contact information for the Plaintiff/Petitioner:	'
telephone number, and	Name (First, Middle, Last): Wagner, Michael W.	
email address, if you	Street Address, Unit #: 33 Lakeshore Dr.	
have one.	City, State, ZIP: Belleville, IL 62220	
<u> </u>	Telephone: (618) 550-2010 Email:	
GETTING COURT DO every day. If you do not	DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else an ot check your email every day, you may miss important information, notice of court dates, or documents to	d that you check from other parties.
Important information for the person getting this form	the case without hearing from you and you could lose the case. Appearance and Answer/Rebe found at: illinoiscourts.gov/documents-and-forms/approved-forms/.	court may decide
Check 4a or 4b. If	4. Instructions for person receiving this Summons (Defendant):	_
Defendant/Respondent		lesponse
only needs to file an  Appearance and	forms with the court within 30 days after you have been served (not cou	ınting the day
Answer/Response	of service) by e-filing or at:	
within 30 days, check		
box 4a. Otherwise, if the clerk gives you a	City, State, ZIP:	
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4b.	☐ b. Attend court:	•
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Appearance and Answer/ Response.	Courthouse Address City State OR	
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(if applicable).  •The clerk's phone	Call the Circuit Clerk at: or visit (	their website
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STATE OF ILLINOIS, CIRCUIT COURT COUNTY		PROOF OF SERVICE OF SUMMONS AND COMPLAINT/PETITION	
Instructions			
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Respondents.	Defendant / Ro	espondent (First, middle, last name)	22LA1110
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	On someone else at the Defendant/Respondent's home who is at least 13 years old and is a family
	member or lives there:
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Case 3:23-cv-00713-SMY Document 1-1 Filed 02/24/23 Page 13 of 30 Page ID #19 Electronically Filed Kinnis Williams, Sr. Circuit Clerk CARMEN GLENN 22LA1110 St. Clair County

12/28/2022 9:53 AM

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

MICHAEL W. WAGNER,

Plaintiff,

V.

Cause No.:

HARBOR FREIGHT TOOLS USA, INC.

Division:

Serve: Registered Agent
Corporate Creations Network IN
350 S. Northwest Highway #300
Park Ridge, IL 60068

Defendant.

### **COMPLAINT**

COMES NOW Plaintiff, Michael W. Wagner, by and through his undersigned counsel, and for his Complaint against Defendant Harbor Freight Tools USA, Inc., states:

#### **Parties**

- 1. Plaintiff Michael Wagner is a resident of St. Clair County, Illinois.
- 2. Defendant Harbor Freight Tools USA, Inc. is a Delaware corporation in good standing with a license to operate its retain stores in Illinois.
- 3. Defendant is a tool and equipment manufacturer, distributor, and retailer that operates a chain of retail stores called Harbor Freight Tools throughout the United States, and specifically in Illinois. Its registered agent for service is Corporate Creations Network IN, 350 S. Northwest Highway #300, Park Ridge, IL 60068.

## Jurisdiction and Venue

4. Jurisdiction in this State is proper as Defendant does significant business and has one or more stores in the state of Illinois for the transaction of business, including the sale of products, including the product which injured Plaintiff.

5. Venue in this Court is proper under 735 ILCS 5/2-101 as there is one or more claim for tort causes of action, and Plaintiff purchased the product at issue at Defendant's store located at 10709 Lincoln Trail, Fairview Heights, Illinois 62208.

## Factual Allegations Common to All Counts

- 6. Plaintiff purchased from Defendant, a Chicago Electric Power Tools 3 piece set of 1 ½" rotary cut-off wheels ("rotary cut-off wheels"), Item 34749, at Defendant's store located at 10709 Lincoln Trail, Fairview Heights, Illinois 62208.
- 7. Defendant was not only the seller and distributor of the product but was also the manufacturer, as it created the Chicago Electric Power Tools brand to sell at its stores.
- 8. The rotary cut-off wheels were designed for use with rotary tools to cut materials, including plastic and metal.
- 9. Plaintiff first used Defendant's product in a reasonably anticipated manner on or about January 19, 2021.
- 10. On January 19, 2021, Plaintiff placed a single rotary cut-off wheel on his rotary tool and turned the rotary tool on. The single rotary cut-off wheel broke off the rotary tool and bounced off Plaintiff's chest and went underneath his face shield and hit his left eye.
- 11. The failure of the product occurred due to a manufacturing defect on the single rotary cut-off wheel, which indicated cracks and/or fractures and/or a lack of bonding on the single rotary cut-off wheel.
- 12. The failure of the product caused the single rotary cut-off wheel to break off the rotary tool and strike Plaintiff's left eye.

# Count I - Strict Liability

COMES NOW Plaintiff Michael W. Wagner and for Count I of his Complaint against Defendant Harbor Freight Tools USA, Inc., states:

- 13. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 12 as if fully set forth herein.
- 14. Defendant designed, manufactured, assembled, marketed, sold, distributed, and/or supplied the product in the ordinary course of its business.
- 15. At the time of the incident, the product was in substantially the same condition as when it was designed, manufactured, assembled, marketed, sold, distributed, and/or supplied by Defendant in the ordinary course of its business.
  - 16. Defendant sold the product to Plaintiff in the regular course of its business.
- 17. At the time of the product's sale, it was in a defective condition unreasonably dangerous when put to a reasonably anticipated use in that:
  - a. the product did not have adequate design and/or manufacturing to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
  - b. the product lacked proper safety mechanisms to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
  - c. the product was made and/or constructed without sufficient strength to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
  - d. the product had numerous hairline fractures;
  - e. the product had a lack of bonding;

- f. the product was made and/or constructed with improper materials;
- g. the product was manufactured in such a way that it did not meet the design requirements for use;
- h. the product was designed in such a way that it did not meet the design requirements for use;
- i. the product was not properly tested to ensure that it was sufficiently strong as to not fail;
- j. the product violated safety rules, standards, and best practices;
- k. the product was manufactured and/or designed in such a way as to fail when used in the manner intended;
- the product was manufactured and/or designed with inadequate strength for ordinary and foreseeable rotary tool use;
- m. the product was not properly tested in foreseeable use environments;
- n. the product components were not integrated in such a way as to prevent it from failing; and/or
- o. the product had inadequate instructions and/or warnings.
- 18. The above defects and dangerous conditions existed when the product was designed, manufactured, assembled, marketed, sold, distributed, and/or supplied by Defendant.
- 19. As a direct and proximate result of the defective and unreasonably dangerous condition, Plaintiff was caused to sustain injuries to his left eye, head, and brain, he has incurred medical expenses in an amount not readily ascertainable, lost wages, and will continue to incur medical expenses in an amount not readily ascertainable.

WHEREFORE, Plaintiff Michael W. Wagner prays for judgment against Defendant on Count I of this Complaint in an amount in excess of Fifty Thousand Dollars (\$50,000.00) that will fairly and reasonably compensate him for his injuries, for the losses he sustained and will sustain in the future, for medical bills and lost wages he has sustained and will sustain in the future, for the pain, suffering and restricted bodily movement sustained and will sustain in the future, for the costs of these proceedings, and for such other and further relief as the Court deems just and equitable.

### Count II - Failure to Warn

COMES NOW Plaintiff Michael Wagner, and for Count II of his Complaint against Defendant Harbor Freight Tools USA, Inc., states:

- 20. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 19 as if fully set forth herein.
- 21. Defendant sold the product to Plaintiff in the regular course of its business and/or put the product into the stream of commerce as part of and in the course of its business.
- 22. The product was unreasonably dangerous when put to a reasonably anticipated use, without Plaintiff's knowledge, of the product's characteristics at the time it was placed in the stream of commerce and/or sold by Defendant in the course of its business.
- 23. Defendant was aware and/or had reason to be aware that users of the product such as Plaintiff would not realize its dangerous condition.
- 24. Defendant did not provide an adequate warning of the dangers of the product which made it likely to be dangerous.
  - 25. Defendant failed to provide a proper or appropriate warning that:
    - a. the product may sustain a failure of the single rotary cut-off wheel which would result in it separating and/or breaking from the rotary tool;

- b. the product lacked adequate design to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
- c. the product lacked safety features to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
- d. the product was dangerous for the use for which it was supplied; and/or
- e. the instructions and/or warnings did not warn against the single rotary cutoff wheel separating and/or breaking from the rotary tool.
- 26. At the time of the incident, the product was unreasonably dangerous when put to a reasonably anticipated use without Plaintiff's knowledge of its characteristics, and Defendant had reason to know the product was dangerous or was likely to be dangerous for the use for which it was supplied.
- 27. At the time of the incident, Plaintiff was a reasonably anticipated and/or expected user of the product.
- 28. Plaintiff was injured when the product failed, the failure of which Plaintiff was unaware was likely to occur, due to the lack of an adequate and proper warning of these dangers.
- 29. As a direct and proximate result of the failure to warn, Plaintiff was caused to sustain injuries to his left eye, head, and brain, he has incurred medical expenses in an amount not readily ascertainable, lost wages, and will continue to incur medical expenses in an amount not readily ascertainable.

WHEREFORE, Plaintiff Michael W. Wagner prays for judgment against Defendant on Count II of this Complaint in an amount in excess of Fifty Thousand Dollars (\$50,000.00) that will fairly and reasonably compensate him for his injuries, for the losses he sustained and will sustain in the future, for medical bills and lost wages he has sustained and will sustain in the future, for the pain,

suffering and restricted bodily movement sustained and will sustain in the future, for the costs of these proceedings, and for such other and further relief as the Court deems just and equitable.

### Count III - Negligence

COMES NOW Plaintiff Michael Wagner, and for Count III of his Complaint against Defendant Harbor Freight Tools USA, Inc., states:

- 30. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 29 as if fully set forth herein.
- 31. At all relevant times, Defendant owed a duty to the public in general and Plaintiff in particular to exercise reasonable care in designing, manufacturing, distributing, selling, monitoring for safety, and testing of the product it sold and/or put into the stream of commerce, including the duty to assure the product did not cause Plaintiff to suffer reasonably foreseeable dangerous consequences arising from the expected use of the product.
- 32. Defendant was negligent, and breached its duties in one or more of the following acts of commission and/or omission:
  - a. In designing the product:
    - without adequate protection to prevent the single rotary cut-off
       wheel fitting from separating and/or breaking from the rotary tool;
    - 2. without proper safety mechanisms to prevent the single rotary cutoff wheel fitting from separating and/or breaking from the rotary tool;
    - without sufficient strength to prevent the single rotary cut-off wheel
       from separating and/or breaking from the rotary tool;
    - 4. with improper materials;

- 5. in such a way that it did not meet the design requirements for use;
- 6. without being sufficiently strong as to not fail;
- 7. in violation of safety rules, standards, and best practices;
- 8. in such a way as to fail when used in the manner intended;
- 9. without adequate strength for ordinary and foreseeable rotational force of rotary tool use;
- 10. without available safety technology, materials, and/or devices to make sure it was safe for its intended purpose and uses;
- 11. such that it did not meet reasonable safety standards single rotary cut-off wheel design; and/or
- 12. with inadequate instructions and/or warnings.
- b. In manufacturing the product:
  - without adequate protection to prevent the single rotary cut-off
     wheel from separating and/or breaking from the rotary tool;
  - 2. without proper safety mechanisms to prevent the single rotary cutoff wheel from separating and/or breaking from the rotary tool;
  - without sufficient strength to prevent the single rotary cut-off wheel
     from separating and/or breaking from the rotary tool;
  - 4. with improper materials;
  - 5. in such a way that it did not meet the design requirements for use;
  - 6. without being sufficiently strong as to not fail;
  - 7. in violation of safety rules, standards, and best practices;
  - 8. in such a way as to fail when used in the manner intended;

- without adequate strength for ordinary and foreseeable rotary tool use;
- 10. without available safety technology, materials, and/or devices to make sure it was safe for its intended purpose and uses;
- 11. such that it did not meet reasonable safety standards for single rotary cut-off wheel; and/or
- 12. with inadequate instructions and/or warnings.
- c. In furnishing, selling, and/or providing the product:
  - without adequate protection to prevent the single rotary cut-off
     wheel from separating and/or breaking from the rotary tool;
  - 2. without proper safety mechanisms to prevent the single rotary cutoff wheel from separating and/or breaking from the rotary tool;
  - without sufficient strength to prevent the single rotary cut-off wheel
     from separating and/or breaking from the rotary tool;
  - 4. with improper materials;
  - 5. in such a way that it did not meet the design requirements for use;
  - 6. without being sufficiently strong as to not fail;
  - 7. in violation of safety rules, standards, and best practices;
  - 8. in such a way as to fail when used in the manner intended;
  - without adequate strength for ordinary and foreseeable rotary tool use;
  - without available safety technology, materials, and/or devices to make sure it was safe for its intended purpose and uses;

- 11. such that it did not meet reasonable safety standards for single rotary cut-off wheel design; and/or
- 12. with inadequate instructions and/or warnings.
- d. In failing to properly test the product to ensure:
  - it had adequate protection to prevent the single rotary cut-off wheel
     from separating and/or breaking from the rotary tool;
  - it had proper safety mechanisms to prevent the single rotary cut-off
     wheel from separating and/or breaking from the rotary tool;
  - it had sufficient strength to prevent the single rotary cut-off wheel
     from separating and/or breaking from the rotary tool;
  - 4. it had proper materials;
  - 5. it met the design requirements for use;
  - 6. it was sufficiently strong as to not fail;
  - 7. it met safety rules, standards, and best practices;
  - 8. it did not fail when used in the manner intended;
  - 9. it had adequate strength for ordinary and foreseeable rotary tool use;
  - it utilized available safety technology, materials, and/or devices to
     make sure it was safe for its intended purpose and uses;
  - 11. it met reasonable safety standards for single rotary cut-off wheel design; and/or
  - 12. it contained adequate instructions and/or warnings.
- e. In failing to warn purchasers, owners, and/or users that the product:

- had inadequate protection to prevent the single rotary cut-off wheel
   from separating and/or breaking from the rotary tool;
- had improper safety mechanisms to prevent the single rotary cut-off
   wheel from separating and/or breaking from the rotary tool;
- 3. had insufficient strength to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
- 4. had improper materials;
- 5. did not meet the design requirements for use;
- 6. was not sufficiently strong as to not fail;
- 7. violated safety rules, standards, and best practices;
- 8. would fail when used in the manner intended;
- 9. had inadequate strength for ordinary and foreseeable rotary tool use;
- 10. was made without available safety technology, materials, and/or devices to make sure it was safe for its intended purpose and uses;
- did not meet reasonable safety standards for single rotary cut-off wheel design; and/or
- 12. had inadequate instructions and/or warnings.
- f. In failing to take action to recall, retrofit, or otherwise protect customers and others who were expected to use the product due to the fact it:
  - had inadequate protection to prevent the single rotary cut-off wheel
     from separating and/or breaking from the rotary tool;
  - had improper safety mechanisms to prevent the single rotary cut-off
     wheel from separating and/or breaking from the rotary tool;

- had insufficient strength to prevent the single rotary cut-off wheel
   from separating and/or breaking from the rotary tool;
- 4. had improper materials;
- 5. did not meet the design requirements for use;
- 6. was not sufficiently strong as to not fail;
- 7. violated safety rules, standards, and best practices;
- 8. would fail when used in the manner intended;
- 9. had inadequate strength for ordinary and foreseeable rotary tool use;
- was made without available safety technology, materials, and/or devices to make sure it was safe for its intended purpose and uses;
- did not meet reasonable safety standards for single rotary cut-off wheel design; and/or
- 12. had inadequate instructions and/or warnings.
- 33. As a direct and proximate result of Defendant's negligence, Plaintiff was caused to sustain injuries to his left eye, head, and brain, he has incurred medical expenses in an amount not readily ascertainable, lost wages, and will continue to incur medical expenses in an amount not readily ascertainable.

WHEREFORE, Plaintiff Michael Wagner prays for judgment against Defendant on Count III of this Complaint in an amount in excess of Fifty Thousand Dollars (\$50,000.00) that will fairly and reasonably compensate him for his injuries, for the losses he sustained and will sustain in the future, for medical bills and lost wages he has sustained and will sustain in the future, for the pain, suffering and restricted bodily movement sustained and will sustain in the future, for the costs of these proceedings, and for such other and further relief as the Court deems just and equitable.

## Count IV - Breach of Implied Warranty of Fitness for a Particular Purpose

COMES NOW Plaintiff Michael Wagner, and for Count IV of his Complaint against Defendant Harbor Freight Tools USA, Inc., states:

- 34. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 33 as if fully set forth herein.
- 35. Defendant had reason to know that the particular purpose for which the product was to be used.
- 36. Defendant had reason to know that the buyer was relying on the skill and judgment of Defendant to select or furnish suitable products and components.
  - 37. The product was not fit for its intended use when it was sold to Plaintiff.
- 38. Defendant breached its warranties as set forth above, and further, in that the product was defective in that:
  - a. the product did not have adequate protection prevent the single rotary cutoff wheel from separating and/or breaking from the rotary tool;
  - b. the product lacked proper safety mechanisms to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
  - c. the product was made and/or constructed without sufficient strength to prevent the single rotary cut-off wheel from separating and/or breaking from the rotary tool;
  - d. the product was made and/or constructed with improper materials;

- e. the product was manufactured in such a way that it did not meet the design requirements for use;
- f. the product was designed in such a way that it did not meet the design requirements for use;
- g. the product was not properly tested to ensure that it was sufficiently strong as to not fail;
- h. the product violated safety rules, standards, and best practices;
- the product was manufactured and/or designed in such a way as to fail when used in the manner intended;
- j. the product was manufactured and/or designed with inadequate strength for ordinary and foreseeable rotary tool use;
- k. the product was not properly tested in foreseeable use environments;
- the product components were not integrated in such a way as to prevent it from failing; and/or
- m. the product had inadequate instructions and/or warnings.
- 39. The defective and dangerous conditions existed when the product was designed, manufactured, assembled, marketed, sold, distributed, and/or recommended for the purpose for which it was put, resulting in Plaintiff's injury.
- 40. As a direct and proximate result of Defendant's breach of warranty, Plaintiff was caused to sustain injuries to his left eye, head, and brain, he has incurred medical expenses in an amount not readily ascertainable, lost wages, and will continue to incur medical expenses in an amount not readily ascertainable.

WHEREFORE, Plaintiff Michael Wagner prays for judgment against Defendant on Count IV of this Complaint in an amount in excess of Fifty Thousand Dollars (\$50,000.00) that will fairly and reasonably compensate him for his injuries, for the losses he sustained and will sustain in the future, for medical bills and lost wages he has sustained and will sustain in the future, for the pain, suffering and restricted bodily movement sustained and will sustain in the future, for the costs of these proceedings, and for such other and further relief as the Court deems just and equitable.

## Count V - Supplying a Dangerous Chattel or Product

COMES NOW Plaintiff Michael Wagner and for Count V of his Complaint against Defendant Harbor Freight Tools USA, Inc., states:

- 41. Plaintiff re-alleges each and every allegation contained in paragraphs 1 through 40 as if fully set forth herein.
- 42. At all relevant times, Defendant was in the business of designing, manufacturing, assembling, testing, marketing, selling, distributing, and/or advertising the product, which failed, and did so in the ordinary course of its business.
  - 43. Defendant supplied the product to Plaintiff for its business purpose.
- 44. Defendant did and/or should have expected Plaintiff to use the product for its intended use.
- 45. Defendant knew and/or had reason to know that the product had a particular defect(s) when put to the reasonably expected use, as further set forth in this Petition.
  - 46. Plaintiff used the product in the manner for which it was supplied.
- 47. Plaintiff was a person for whom the product was supplied and was a reasonably expected person to be endangered by its probable use.

- 48. The product was defective for the reasons set forth above and which have been incorporated into this Count.
- 49. Defendant knew or should have known in the exercise of reasonable care of the product's defective condition.
- 50. Defendant had actual or constructive knowledge of the defective condition of the product, which was discovered, could have been discovered, and/or should have been discovered before the product was supplied.
- 51. Defendant had no reason to believe users such as Plaintiff would realize the danger posed by the product's defective condition.
- 52. The product's defective condition was discoverable by Defendant upon inspection, but not discoverable by Plaintiff.
- 53. Defendant failed to sufficiently inspect and/or test the defective product. Defendant failed to inform and/or warn Plaintiff of the product's defective condition.
- 54. Defendant failed to exercise ordinary or reasonable care to make the product safe for the use for which it was supplied.
- 55. Defendant failed to exercise ordinary or reasonable care to adequately warn of the product's defective condition, or the facts that made it likely to be dangerous.
- 56. Defendant knew or had reason to know the reasonably expected users of the product would not discover its defective condition.
- 57. As a direct and proximate result of the product's defect and Defendant's failure to warn and/or remedy the defect, Plaintiff was caused to sustain injuries to his left eye, head, and brain, he has incurred medical expenses in an amount not readily ascertainable, lost wages, and will continue to incur medical expenses in an amount not readily ascertainable.

WHEREFORE, Plaintiff Michael Wagner prays for judgment against Defendant on Count V of this Complaint in an amount in excess of Fifty Thousand Dollars (\$50,000.00) that will fairly and reasonably compensate him for his injuries, for the losses he sustained and will sustain in the future, for medical bills and lost wages he has sustained and will sustain in the future, for the pain, suffering and restricted bodily movement sustained and will sustain in the future, for the costs of these proceedings, and for such other and further relief as the Court deems just and equitable.

MUCHNICK HABER MARGOLIS, LC

By: /s/Joshua D. Margolis

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